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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 246/1997

New Delhi this the 6th of June 1997

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)
Hon'ble Shri S.P. Biswas, Member (A)

Shri Govind Ballabh,
Deputy Registrar,
Central Administrative Tribunal, P.B.,
Faridkot House,
New Delhi. Petitioner

(Applicant in Person)

-Versus-

1. Union of India,
The Secretary, Deptt. of
Personnel & Training,
North Block,
New Delhi.
2. Central Administrative Tribunal,
through its Registrar, Principal Bench,
Faridkot House,
New Delhi. Respondents

(By Advocate: Shri N.S. Mehta)

ORDER

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

The petitioner in this case was appointed as Court Officer on deputation basis with effect from 8.1.1986 in the office of the second Respondent. He was at that time working on the post of Court Officer in the High Court of Delhi in the pay scale of Rs. 2000-3500. In response to a letter of the second respondent dated 9.6.1989, the applicant gave his consent for absorption with the second Respondent vide the letter dated 13.6.1989 and on the basis of the said consent as well as the consent from his parent office, the Respondent No. 2 passed an order absorbing the petitioner with effect from 1.11.1989 as Court Officer in the pay scale of Rs. 2000-3500/-.

2. That in the meantime in pursuance of a decision of the Delhi High Court in CWP 2756/91 delivered on 14.11.1991, and also of an order passed by the Hon'ble Supreme Court on 25.3.1992 in SLP No. 2594/92, the pay scale of the Court Masters in the High Court of Delhi was duly revised from Rs. 2000-3500/- to Rs. 3000-4500/-, with effect from 1.1.1986 and arrears of pay was also released to them accordingly. On the basis of the said order dated 13.4.1992, the Respondent No. 2 also revised the pay scale of the petitioner and the increments and arrears of pay were given to him, in the same manner as it was given to his counterparts in Delhi High Court. The said order dated 11.5.1993 is reproduced herebelow:

"Consequent upon the revision of pay scale for the post of Court Master in the High Court of Delhi from Rs. 2000-3500 to Rs. 3000-4500 w.e.f. 1.1.1986 vide Ministry of Law & Justice, Department of Justice, letter No. L-14012/8/91-Jus, dated 13.4.92, the pay Shri Govind Ballabh, Court Officer is fixed in the scale of Rs. 3000-100-3500-125-4500 as under:-

Pay in the parent deptt. as on 1.1.86
=Rs.3000/-

Pay in the Central Administrative Tribunal as on 8.1.86 (AN), = Rs. 3000/- date of appointment in Central Administrative Tribunal as CO

1.11.1986, the date of his next increment. = Rs. 3100/-

1.11.1987, the date of his next increment = Rs. 3200/-

1.11.1988, the date of his next increment = Rs. 3300/-

1.11.1989, the date of his next increment = Rs. 3400/-

1.11.1989, the date of his = Rs. 3400/-

1.11.1990, the date of his next increment = Rs. 3500/-

1.11.1992, Stagnation of increment = Rs. 3600/-

In addition to the pay as fixed above, Shri Govind Ballabh, Court Officer will draw deputation duty allowance at the rate of 5% w.e.f. 8.1.86 (AN) to 31.10.89, subject to the condition that the pay plus deputation duty allowance shall not exceed Rs. 3500/- (Maximum of the scale of C.O. in the Central Administrative Tribunal.)"

3. The order of the second Respondent was perfectly in order according to the petitioner, except the fact that the rider given in the said order had the effect of depriving the petitioner from earning the annual increments from the year 1990 onwards, on the basis that the Deputation Duty Allowance given to an incumbent in the second Respondent's office in the relevant pay scale, shall not exceed Rs. 3500/- since that was the maximum scale applicable to a Court Officer in the Central Administrative Tribunal.

4. The petitioner aggrieved by this Order filed this O.A. against the Central Administrative Tribunal as Respondent No. 2 and Department of Personnel & Training (DOP&T) as the Respondent No.

1. The main contention of the petitioner is that the Respondent No. 2 has rightly taken a decision to protect his pay as that of the revised pay of his counter-parts in his parent body and the Respondent No. 1 was wrongly approached for approval and the respondent No. 1 has wrongly denied the said

approval and thereby the respondent No. 2 has abdicated its power which they were duty bound to exercise under the Act and the rules; instead, it is alleged that they have wrongly surrendered the said power to Respondent No. 1. It was also alleged that his pay protection was to be done under FR 24 and under the said provision a deputationist becomes entitled to a scale of pay, higher than the scale of pay attached to the ex-cadre post and when he is allowed to complete the normal tenure, the applicant's pay should be revised in accordance with the revision that has taken place with the pay scale of his counter part in his parent body. It was stated that the Respondent No. 2 had correctly maintained his "lien" between 8.1.1986 to 1.11.1989 and under FR 15(a), protection was to be given to the petitioner. FR 15(a) is reproduced herebelow:

FR 15

"The President may transfer a Government servant from one post to another; provided that except -

- (1) on account of inefficiency or misbehaviour, or
- (2) on his own written request; servant shall not be transferred substantively to, or, except in a case covered by Rule 49, appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien, or would hold a lien had his lien not been suspended under Rule 14."

5. Similarly, since the applicant's absorption is in the public interest, and in view of the applicant's pay having been revised by the Respondent No. 2 by its Order dated 11.5.1993, in pursuance of the judgement of the Delhi High Court,

as stated above, the petitioner was entitled to all consequential benefits, even after his absorption. According to the petitioner, even though FR 19 restricted the pay to the pay sanctioned for the post, yet it empowers the authority competent to create a post, to allow the pay in excess of the pay sanctioned for the post and the contention was that under the rules the Chairman, Central Administrative Tribunal was the Appropriate Competent Authority to grant this relief and instead of granting the said relief on the basis of the advise of FA&CAO, Central Administrative Tribunal, the matter was wrongly sent for approval to Respondent No. 1.

6. The petitioner had approached the Respondent No. 2 by way of a representation on 11.3.1994 itself and on 24.5.1994, he sought for upgradation of one post of Court Officer at the instance of the Respondent No. 2 in accordance with FR 19, 22, & 23 but no action was taken by the Respondent No. 2, though empowered to do so under the Rules. Instead the matter was referred to the Respondent No. 1 for approval.

7. Central Administrative Tribunal namely the Respondent No. 2 intimated the petitioner the order of the Respondent No. 1 rejecting the claim of the petitioner, at the instance of the DOP&T and the same was communicated to the petitioner by a letter dated 22.12.1995. A copy of the said letter of the Respondent No. 1 is reproduced herebelow :

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To

The Registrar,
 Central Administrative Tribunal,
 Principal Bench,
 Faridkot House,
 Copernicus Marg,
 New Delhi.

Subject: Upgradation of one post of Court Officer in the pay scale of Rs.3000-4500 as personal to Shri Govind Ballabh.

Sir,

I am directed to refer to your letter No.PB/4/40/85-Estt.I(Vol.I) dated 22.11.95 on the above subject and to say that the proposal has been examined in consultation with the Estt Division of this Department. It has, however, not been found possible to agree to the request of Shri Govind Ballabh.

Yours faithfully,
 sd/-

(C.L. SHARMA)
 Under Secretary" (emphasis added)

A copy of the letter of respondent No.2 communicating the said order of the DOP&T stating that the DOP&T has refused to approve upgradation of one post of Court Officer in the pay scale of Rs. 3000-4500 as personal to the petitioner, is also reproduced herebelow:

MEMORANDUM

Sub: Upgradation of one post of Court Officer in the pay scale of Rs.3000-4500, as personal to Shri Govind Ballabh.

With reference to his application dated 13.11.1995 on the above subject, Shri Govind Ballabh, Deputy Registrar, is informed that the matter was again referred to the DOP&T with a request to convey their approval for upgradation of one post of Court Officer in the pay scale of Rs.3000-4500 as personal, to Shri Govind Ballabh from the date of deputation till his regular promotion as Deputy Registrar. However, DOPT, in

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turn, have informed that the matter has been examined by them in consultation with their Establishment Division and it has not been found possible to agree to the request of Shri Govind Ballabh.

(A.K. AJMANI)
DEPUTY REGISTRAR(ESTT.)" (emphasis added)

8. The petitioner thus had approached this Court within the period of limitation.

9. The learned senior counsel appearing on behalf of the respondents submitted that the claim of the petitioner is hit by the vice of limitation and this contention has no legs to stand on the basis of our observations given just here-in- above in paras 6-8 above.

10. The important question of law required to be decided in this case is whether the Central Government, namely, the 'appropriate authority' who has been given quasi-legislative power, under the Act, can exercise administrative and financial powers over the Chairman, Central Administrative Tribunal, who is for all purposes the Head of a Department of the Central Government. That is to say whether Respondent No.1 can treat Respondent No.2 as its subordinate and super impose itself upon Respondent No.2, while Respondent No.2 functions as a separate independant Department of the Central Government. If so, under what provisions of law: Act or Rules.

11. In accordance with the Constitutional Scheme, separation of power is one of the basic features of our Constitution under this principle it

is only the legislature that makes law while the judiciary interprets the law and the executive implement the same. But as it happens in almost all the countries, the vast complicated and complex nature of administration, has necessitated the legislature to delegate certain legislative powers to the executive as well, commonly known as quasi-legislative function of the rule making power. It is in accordance with these delegated legislative function, Central Government assumes the role of passing subordinate legislation within the framework prescribed by the respective legislatures.

12. This has been well recognised by various decisions of the Hon'ble Supreme Court, right from the Constitutional Bench decision in the matter of In Re Delhi Laws Act, reported in (1951) S.C.R. 747. The exercise of quasi-legislative function at the instance of the executive is also sometimes known as 'subordinate legislation' or 'delegated legislation'. Delegated legislation has been so described with reference to the power as conferred by a particular enactment, while 'subordinate legislation' refers to the same power but with reference to the instrument of the delegated legislation enacted in exercise of the quasi-legislative function (cfr - DD Basu, Administrative Law (3rd edition - Calcutta - 1993 page 30).

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13. The Hon'ble Supreme Court in a large number of cases considered the extent of this power and has broadly laid down the following principles, namely, that the Indian Constitution confers a power and imposes a duty on the legislature to make laws and the said function can be delegated only by a statute and such delegation cannot create another parallel legislature nor destroy its legislative powers; that the legislature must retain in its own hands the essential legislative function consisting of the determination of the legislative policy and its formulation as a binding rule of conduct; that once the legislative function is performed by the legislature and the policy has been laid down, it is open to the legislature to delegate to the executive authority, ancillary and subordinate powers necessary for carrying out the policy and purpose of the Act as may be necessary to make the legislation effective, useful and complete; that the authority to which delegation is made shall exercise the said power within the four corners of the same statute and not beyond and that the delegated legislation must be consistant with the parent Act and cannot travel beyond the legislative policy and standard laid down by the legislature.

14. These conclusions arise out of the following decisions of the Hon'ble Supreme Court:-

Delhi Laws Act, 1912, Re, AIR 1951 SC 332; 1951 SCR 747; AIR paras, Kania, CJ.35-42; Fazl Ali, J., 72-74, 90; Shastri, J., 99-100, 128; Mahajan, J., 148, 184, 189; Mukherjee, J., 219-21, 231, 246, 275; Das, J., 280, 324-30; Bose, J., 379, 388-89; Hamdard Dawakhana V. Union of India, AIR 1960.

SC 554: 1960 SCR 671; Shama Rao v. Union Territory of Pondicherry, AIR 1967 SC 1480: (1967) 2 SCR 650; Devi Das v. State of Punjab, AIR 1967 SC 1895: (1967) 3 SCR 557; Municipal Corpn., Delhi v. Birla Cottom Mills, AIR 1968 SC 1232: (1968) 3 SCR 251; Gwalior Rayan Silk Mfg. Vo. v. Asstt. Commr., (1974) 4 SCC 98: AIR 1974 SC 1660: (1974) 2 SCR 879; Avinder Singh v. State of Punjab (1979) 1 SCC 137: AIR 1979 SC 321: Brij Sunder v. First Addl. District Judge, (1989) 1 SCC 561: AIR 1989 SC 572: Ramesh Birch v. Union of India, 1989 Supp (1) SCC 430: AIR 1990 SC 560.

15. The respondents brought to our notice the relevant provisions in Central Administrative Tribunal Act & Rules justifying the action of both the respondents No.2 & 1, and relied heavily on Rule 4 of Central Administrative Tribunal (Finance & Administrative Powers) Rules, 1985, (vide para 22 below).

16. The substantive power governing the financial and administrative powers of the Chairman is given under Section 12 and 13 of the Act and the Rule Making Power is given under Section 35, 36, 36A and Clause (1) of Section 37. The Section 12 and 13 are reproduced herebelow:

"12. Financial and administrative powers of the Chairman.- The Chairman shall exercise such financial and administrative powers over the Benches as may be vested in him under the rules made by the appropriate Government:

Provided that the Chairman shall have authority to delegate such of his financial and administrative powers as he may think fit to the Vice Chairman or any other officer of the Tribunal, subject to the condition that the Vice Chairman or such officer, shall, while

exercising such delegated powers, continue to act under the direction, control and supervision of the Chairman".

"13. Staff of the Tribunal.- (1) The appropriate Government shall determine the nature and categories of the officers and other employees required to assist a Tribunal in the discharge of its functions and provide the Tribunal with such officers and other employees as it may think fit.

(1-A) The officers and other employees of the Tribunal shall discharge their functions under the general superintendance of the Chairman.

(2) The salaries and allowances and conditions of service of the officers and other employees of the Tribunal shall be such as may be specified by rules made by the appropriate Government."

17. Under Section 12, the Chairman of Central Administrative Tribunal is the only authority to exercise the Financial and Administrative powers as vested in him under the Rules made by the Appropriate Government and under this provision the Chairman has the power also to delegate such Financial and Administratrive Powers which in his own estimate is necessary in a given situation; at the same time they will continue to act under his own direction, control and supervision. Thus, all the powers Financial and Administrative are conferred upon the Chairman and it is vested in him and description of such powers are to be elaborated by the Central Government, under its assigned quasi-legislative functions. Once the Appropriate Government enacts the Rules as mentioned in Section 12, it is to be understood that the Financial and Administrative Powers are statutorily vested in the Chairman of Central Administrative Tribunal and it

shall not be understood to be continued to be controlled and supervised, as and when the Chairman exercises those vested powers in conducting the day today business. The role of the Appropriate Government is only to specify the powers of the Chairman which is already vested in him by the substantive provision of Section 12, i.e. to say, the Appropriate Government has no power to take away any of the Financial or Administrative power already vested in him under Section 12 by, either not making a rule under the Rule Making Power of the Appropriate Government or by restricting the powers of the Chairman in the name of exercising the Rule Making Power by the Appropriate Government. The Rules referred to in para below 22 are those one made under this provision.

18. Similarly, the rule-making functions of the Appropriate Government is also more specifically given under Section 13 to determine the nature and categories of the Officers and other employees required for the purpose of smooth functioning of the Tribunal. One of the Notifications referred to in para 22 is the one prescribed by the appropriate authority under this provision.

19. These powers are also the subject matter of the Rule Making Powers of the Appropriate Government under Section 36, Section 36 A and Clause (1) of Section 37. Section 36 is reproduced herebelow:

36. Power of the appropriate Government to make rules. - The appropriate Government may, by notification, make rules to provide for all or any of the following matters, namely:-

- (a) the financial and administrative powers which the Chairman of a Tribunal may exercise over the Benches of the Tribunal under Section 12;
- (b) the salaries and allowances and conditions of service of the officers and other employees of a Tribunal under sub-section (2) of Section 13; and
- (c) any other matter not being a matter specified in Section 35 in respect of which rules are required to be made by the appropriate Government."(emphasis added).

20. It is clear from these provisions that the scheme of the Act is that the Financial and Administrative Powers as far as the Tribunal and its staff, and the day-to-day functioning and other affairs are concerned, is vested in the Chairman, while the Rule Making Power to specify and determine the nature and categories of the Officers and all other necessary details by enacting the Rules/Notification at the instance of the Appropriate Government, is with the Central Government under the powers given to the Appropriate Government under Sections 12,13 and 36 etc of the Act. The Appropriate Government is empowered to issue Rules and the function of the Appropriate Government is very clearly limited to making appropriate rules in accordance with the above said provisions. Once such Notification or Rules are made, any further interference with the day today functioning of the Tribunal, except otherwise provided in the Rules itself will be illegal and contrary to the scheme and substantive provisions of the Act. Rule 4 is

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one such exception, and the correct import of the same may be seen in paras 24 & 25, below.

21. Rules Making Power is a quasi-legislative function and the Appropriate Government under Central Administrative Tribunal Act has been given the power to make rules which is admittedly legislative in nature. The Appropriate Government have not been conferred any Executive Power under the Act and the Parliament in its wisdom has conferred the Executive Power, as an implementting authority, with the Chairman of the Central Administrative Tribunal only, as far as the Financial and Administrative Powers for the purpose of functioning of Central Administrative Tribunal is concerned.

22. In exercise of the powers mentioned above, the Appropriate Government has in fact passed two sets of Rules, so far: - one, under Section 12 and the other under Section 13 read with the powers given to it under Section 36 and 36 A. The Rules made under Section 13 read with Section 36 of the Act is given herebelow:

GSR No. 825(E). In exercise of the powers conferred by clause (b) of Section 36 of the Administrative Tribunals Act, 1985 (13 of 1985), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement. (1) These rules may be called the Central Administrative Tribunal (Staff) (Conditions of Service) Rules, 1985.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definition. In these rules, unless the context otherwise requires, "Tribunal" means the Central Administrative Tribunal.

3. Staff of the Tribunal - The nature and categories of the officers and other employees of the Tribunal and the scale of pay attached thereto shall be as specified in the Schedule appended to these rules.

4. Conditions of Service. - The conditions of service of the officers and other employees of the Tribunal in matters of pay, allowances, leave, provident fund, age of superannuation, pension and retirement benefits, medical facilities and other conditions of service, shall be regulated in accordance with such rules and regulations as are for the time being applicable to officers and employees belonging to Group 'A', Group 'B', Group 'C' and Group 'D' of the Central Government, as the case may be, of the corresponding scales of pay stationed at these places. (Emphasis added).

The rules made under Section 12 read with Section 35 and Section 36 are also reproduced herebelow:

"Financial and Administrative Powers Rules, 1985

A-12018/5/85-AT, dated the 20th November, 1985

G.I., Dept. of Per. & Ter., Notification No. A-12018/5/85-AT, dated the 20th November, 1985.

GSR No. 854(E). In exercise of the powers conferred by Section 12, clause (f) of Section 35 and clause (a) of Section 36, of the Administrative Tribunals Act, 1985 (13 of 1985), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement. (1) These rules may be called the Central Administrative Tribunal (Financial and Administrative Powers) Rules, 1985.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions. In these rules, unless the context otherwise requires -

(a) "Act" means the Administrative Tribunals Act, 1985, 13 of 1985);

(b) "Chairman" means the Chairman of the Tribunal;

(c) "Tribunal" means the Central Administrative Tribunal.

3. Sittings of an additional Bench at a place [other than the place where it shall ordinarily - If at any time the Vice Chairman of any additional Bench is satisfied that circumstances exist which render it necessary to have sittings of the said Bench at any place falling within its territorial jurisdiction, other than the place or places at which it ordinarily sits, he may with the previous consent of the Chairman direct the Additional Bench shall hold its sittings at any such appropriate place.

4. Powers of Chairman. The Chairman shall have the same powers as are conferred on a Department of the Central Government in respect of the Delegation of Financial Powers Rules, 1978, the General financial Powers Rules, 1978, the General Financial Rules, 1963; the Fundamental and Supplementary Rules, the Central Civil Services (Joining Time) Rules, 1979, the Central Civil Services (Conduct) Rules, 1964, the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and the General Provident Fund (Central Services) Rules, 1960;

Provided that the exercise of the financial powers shall be subject to any procedural or other instructions issued from time to time by the Government and after obtaining the advice of the Financial Adviser and Chief Accounts Officer of the Tribunal:

Provided further that in respect of matters not within the competence of the Chairman, concurrence of the Ministry of Finance or any other authority shall be obtaining by the Chairman through the Department of personnel and Training." (Emphasis added).

23. The Rules issued under Section 13 prescribed the Conditions of Service in matters of Pay and Allowances of the Officers and the Employees belonging to all the Groups of employees working in the Tribunal while, the Rules made under Section 12 further clarifies the nature of the power vested in the Chairman by the Legislature under Section 12 of the Act. Clause (4) of these rules has also in

addition declared that the Chairman shall have the same powers as conferred on a Department of the Central Government, in respect of the rules detailed in Rule 4. The rules issued under Section 13, applies all the rules of the Central Government to the employees of Central Administrative Tribunal on a 'mutatis mutandis basis, and that would not amount to mean that the controlling authority mentioned in those rules would be the same as those who exercise Control over the employees of the Central Government. Thus DOP&T is no way the controlling authority, as far as the employees of Central Administrative Tribunal are concerned, even though DOP&T continues to be the controlling authority, as far as the employees of Central Government, other than those of Central Administrative Tribunal are concerned. Under the 'mutatis mutandis' rule, it is the Chairman, as an independent Head of the Department of Government of India, exercises full control over the employees of Central Administrative Tribunal, in his administrative capacity.

24. It is relevant to mention here that the "Appropriate Government" has been defined in Clause (d) of Section 3 of the Act. According to the said provision, 'Central Government' is the "Appropriate Authority", that is to say, it is Department of Personnel & Training namely the Respondent No. 1 which should act as "Appropriate Government" and it is the DOP&T who has been given the delegated powers of legislation, namely the Rule Making power by the Legislature. As stated above, the Executive Powers

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under the Act for implementing the legislative policy, as far as Central Administrative Tribunal is concerned, are vested in the Chairman, Central Administrative Tribunal under Section 12 of the Act and as further clarified and affirmed by the delegated Legislation of the Appropriate Government under Rule 4. It is further appropriate to mention that the Rule 4 clarifies the powers of the Chairman to be the same as the one conferred upon the Department of the Central Government. The terms "Department of the Central Government" has not been defined in the Act, while the same has been defined in the General Financial Rules and the same is reproduced herebelow:

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"Department of the Central Government" means a Ministry or a Department of the Central Government as notified from time to time and includes the Planning Commission, the Department of Parliamentary Affairs, the President's Secretariat, the Vice-President's Secretariat, the Cabinet Secretariat and the Prime Minister's Secretariat."

25. Learned senior standing counsel appearing on behalf of the respondents, apart from the objection relating to limitation as above, made an attempt to defend the action of the respondent no. 1 with reference to Rule 4 issued under Section 12 of the Act. He was to make submissions as to what were the provisions of the Act or Rules, under which Respondent No. 2 referred the matter to Respondent No. 1 for approval and Respondent No. 1 in turn, acted upon it and refused approval. He fairly stated that under Rule 4, Chairman, Central

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Administrative Tribunal has all the powers identical to that of the Head of the Department of the Central Government with reference to the rules mentioned in the said rule but stated that the power of the Respondent no. 2 is only circumscribed by the second proviso to Rule 4. He also stated that the second proviso may not empower the Respondent no. 1, to have an over-riding executive/administrative power over Chairman. But in matters where the Chairman, Central Administrative Tribunal requires concurrence of the Ministry of Finance, such matters shall always be routed through respondent no.1.

We have no hesitation to agree with the submission of the learned counsel that the role of the Respondent no. 1 under the second proviso to Rule 4 is only limited to route through the said Ministry, all the matters not within the competence of the Chairman wherein concurrence of the Ministry of Finance is required. It must, therefore, obviously follow that in no manner, the power of the Chairman, Central Administrative Tribunal is subordinate to that of the responderit no. 1.

26. It is further obvious, that the Chairman of the Central Administrative Tribunal has all the powers, Financial and Administrative as they are conferred on a Department of the Central Government. It is to be understood that since the Chairman enjoys all the powers of a Department of the Central



Government, this includes the Ministerial powers since the Minister is the Head of a Department of the Central Government.

27. As far as the present case is concerned, therefore, the reference of the case of the petitioner by Respondent No. 2 to Respondent No. 1 for approval, is totally contrary to the provisions of Central Administrative Tribunal Act as well as the rules, as stated above. It is the Chairman of the Central Administrative Tribunal who has full Financial and Administrative Powers as are conferred upon the Department of Central Government, including that of the Head of the Department of the Central Government and as far as these Executive Powers are concerned, the Chairman is not subordinate to any other Department of the Central Government. He is totally independent and enjoys full autonomy as far as the functioning of the Central Administrative Tribunal is concerned and to surrender these powers and seek day-to-day approval from another Department of the Central Government, will render the Central Administrative Tribunal which is to function as a full fledged department of the Central Government, a subordinate to another Department of the Central Government namely DOP&T, and that is in no terms the present legislative policy.

28. DOP&T in its turn was also wrong to deal with the communications from the Chairman of the Central Administrative Tribunal as if the Department of Personnel is a superior department to Central



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Administrative Tribunal. In our confirmed opinion, the Respondent No. 1 should not have interfered in any manner, in the exercise of the Executive Powers of the Chairman while the substantive provisions in the Act and the rules permit Respondent No. 2 to exercise full powers as far as the functioning of the Central Administrative Tribunal is concerned. The assigned function of Respondent No. 1 is quasiLegislative Authority only. Rule Making Power does not entail continued exercise of administrative/executive power in a supervisory manner. Therefore, we have no hesitation to hold that the orders passed by Respondent No. 2 referring the matter to Respondent No. 1 for its approval and the orders passed by the Respondent No. 1 refusing approval, are both equally bad and contrary to the provisions of the Act and the Rules, and therefore quashed. Respondent No.2 shall pass fresh orders in accordance with law and in accordance with the observations and findings recorded above, within two months from the date of this Order. We would further make it clear that in case the order passed by the Chairman in the circumstances is the one that requires concurrence of the Ministry of Finance in accordance with the rules, the same may be routed through respondent no. 1. In any case, it shall not be dealt with by respondent no.1 on its own as an authority, treating the Chairman, as its subordinate.

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29. The learned counsel for the respondents did attempt to justify these impermissible over-steppings as a part of the functioning of DOP&T as a nodal Ministry to Central Administrative Tribunal. In our opinion the observations of the Supreme Court in L.Chandra Kumar's case (1997(3)12 Judgement Today SC 589 were precisely to keep these encroachments on hold.

"It has been brought to our notice that one reason why these Tribunals have been functioning inefficiently is because there is no authority charged with supervising and fulfilling their administrative requirements. To this end, it is suggested that the Tribunals be made subject to the supervisory jurisdiction of the High Courts within whose territorial jurisdiction they fall. We are, however, of the view that this may not be the best way of solving the problem. We do not think that our constitutional scheme requires that all adjudicatory bodies which fall within the territorial jurisdiction of the High Courts should be subject to their supervisory jurisdiction. If the idea is to divest the High Courts of their supervisory functions cannot, in any manner, be of assistance to them. The situation at present is that different Tribunals constituted under different enactments are administered by different administrative departments of the Central and the State Governments. The problem is compounded by the fact that some Tribunals have been created pursuant to Central Legislations and some others have been created by State Legislations. However, even in the case of Tribunals created by Parliamentary legislations, there is no uniformity in administration. We are of the view that, until a wholly independent agency for the administration of all such Tribunals can be set-up, it is desirable that all such Tribunals should be, as far as possible, under a single nodal Ministry which will be in a position to oversee the working of these Tribunals. For a number of reasons that Ministry should appropriately be the Ministry of Law. It would be open for the Ministry, in its turn, to appoint an independent supervisory body to oversee the working of the Tribunals. This will ensure that if the President or Chairperson of the Tribunal is for some reason unable to

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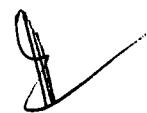
take sufficient interest in the working of the Tribunal, the entire system will not languish and the ultimate consumer of justice will not suffer. The creation of a single umbrella organisation will, in our view, remove many of the ills of the present system. If the need arises, there can be separate umbrella organisations at the Central and the State levels. Such a supervisory authority must try to ensure that the independence of the members of all such Tribunals is maintained. To that extent, the procedure for the selection of the members of the Tribunals, the manner in which funds are allocated for the functioning of the Tribunals and all other consequential details will have to be clearly spelt out.

The suggestions that we have made in respect of appointments to Tribunals and the supervision of their administrative function need to be considered in detail by those entrusted with the duty of formulating the policy in this respect. That body will also have to take into consideration the comments of expert bodies like the LCI and the Malimath Committee in this regard. We, therefore, recommend that the Union of India initiate action in this behalf and after consulting all concerned, place all these Tribunals under one single nodal department, preferably the Legal Department."

30. Since no further reliefs have been pressed by the applicant and since no further arguments on law were advanced on behalf of the Respondent, this OA is allowed to the extent stated above; no order as to costs.



(S.P. Biswas)
Member (A)



(Dr. Jose P. Verghese)
Vice Chairman (J)

Mittal